

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: KEURIG GREEN MOUNTAIN SINGLE-SERVE COFFEE ANTITRUST LITIGATION

This Document Relates to:

BJ'S WHOLESALE CLUB, INC.,

Plaintiff,

-against-

KEURIG GREEN MOUNTAIN, INC.,

Defendant.

AND

WINN-DIXIE STORES, INC.; AND
BI-LO HOLDING, LLC,

Plaintiff,

-against-

KEURIG GREEN MOUNTAIN, INC.,

Defendant.

Case No. 1:14-md-02542-VSB

[Related Case Nos. 1:21-CV-7493;
1:21-CV-7504]

**STIPULATION AND PROPOSED
ORDER REGARDING SEALING
PROCEDURE FOR SUMMARY
JUDGMENT AND *DAUBERT*
MOTIONS IN *BJ'S* AND *WINN-DIXIE* ACTIONS**

The undersigned parties respectfully submit this proposed stipulation to efficiently resolve sealing motions in the *BJ's* and *Winn-Dixie* actions while ensuring orderly resolution of earlier-filed sealing motions in this MDL that have been referred to Special Master Holwell.

WHEREAS, Briefing on summary judgment and *Daubert* motions in the *BJ's* and *Winn-Dixie* actions commenced on June 13, 2023 and will conclude by September 11, 2023, *see* ECF No. 2052 (schedule);

WHEREAS, The summary judgment and *Daubert* filings involve exhibits designated by

the parties or third parties as Confidential or higher pursuant to the Protective Order, ECF No. 496, including some of the same material that parties and third parties have requested to seal in connection with class certification, summary judgment, and *Daubert* briefing in the other cases in this MDL;

WHEREAS, on June 7, 2023, the undersigned parties entered a stipulation to streamline the number of sealing requests to the Court and alleviate the burden on the parties and implicated third parties in the *Winn-Dixie* and *BJ's* summary judgment and *Daubert* record, ECF No. 2058.

WHEREAS, On June 13, 2023, the Court issued an Opinion & Order providing notice of the Court's intent to appoint a special master to resolve pending sealing requests, ECF No. 2061, and on August 1, 2023, the Court appointed the Honorable Richard Holwell (ret.) as Special Master to resolve sealing motions, ECF No. 2106;

WHEREAS, the sealing motions referred to Special Master Holwell include motions filed in the *BJ's* and *Winn-Dixie* actions (the "BJ's/Winn-Dixie Sealing Requests"). The full set of referred motions is identified at ECF No. 2016 at 7 n.3. The referred BJ's/Winn-Dixie Sealing Requests are ECF Nos. 2043, 2048, 2055, 2059, 2062, 2068, 2082, and 2113. *See id.* and ECF No. 2118. The undersigned parties expect that future sealing requests relating to the upcoming summary judgment and *Daubert* reply filings in the *BJ's* and *Winn-Dixie* actions also may be referred to Special Master Holwell; and

WHEREAS, BJ's, Winn-Dixie, and Keurig have met and conferred and reached agreement on a sealing process that would alleviate substantial burden on the parties and the implicated third parties—as well as on the Court and Special Master Holwell—by streamlining the number of sealing requests. The undersigned parties propose that the BJ's/Winn-Dixie Sealing Requests should be resolved by Special Master Holwell on a "second track," after he

issues his report and recommendation on the other referred sealing motions. This process has several benefits. First, it would allow Special Master Holwell to prioritize the earlier-filed sealing motions. Second, it would ensure consistent treatment of materials referenced in prior briefing in the MDL and ongoing briefing in the *BJ's* and *Winn-Dixie* actions. Third, it would allow the parties and third parties to conform their sealing requests in the *BJ's* and *Winn-Dixie* actions to forthcoming rulings on the earlier-filed sealing motions; and

WHEREAS, Special Master Holwell has reviewed and approved the undersigned parties' proposed stipulation.

IT IS HEREBY AGREED, by and among the undersigned:

1. On or before each summary judgment and *Daubert* deadline, *see* ECF No. 2052, the filing parties have filed or will file non-redacted briefs and Rule 56.1 statements (where applicable) under seal on ECF. The parties have also filed or will file redacted versions on the public docket in accordance with existing confidentiality designations under the Protective Order. The parties have served or will serve exhibits on all parties by email and provided exhibits to the Court by email or another manner as directed. *See* ECF No. 2058.

2. After summary judgment and *Daubert* briefing in the *Winn-Dixie* and *BJ's* actions concludes on September 11, 2023, the filing parties shall promptly notify any third parties if their material is implicated, provide copies of the relevant material, and provide a copy of this Stipulation.

3. Within 60 days after Special Master Holwell issues his report and recommendation on the other referred sealing motions, *see* ECF No. 2106 at 7 n.3, each implicated party or third party will email to Special Master Holwell, with cc to counsel for the undersigned parties, one letter seeking to maintain under seal any material in the *Winn-Dixie* and *BJ's* summary judgment and *Daubert* record.

4. This sealing procedure does not alter any party or third party's obligation to substantiate sealing requests as required by governing law.

5. This sealing procedure is without prejudice to any party's right to later challenge the confidentiality designations under the Protective Order.

Dated: September 14, 2023

COUNSEL FOR PLAINTIFF
BJ'S WHOLESALE CLUB, INC.:

**CADWALADER, WICKERSHAM
& TAFT LLP**

By: /s/ Philip J. Iovieno (with permission)

Philip J. Iovieno
200 Liberty Street
New York, NY 10281
Telephone: (212) 504-6000
philip.iovieno@cwt.com

Gregory W. Langsdale
Kristen J. McAhren
700 Sixth Street, NW
Washington, DC 20001
Telephone: (202) 862-2200
kristen.mcahren@cwt.com
greg.langsdale@cwt.com

COUNSEL FOR PLAINTIFFS WINN-DIXIE
STORES, INC. AND BI-LO HOLDING, LLC

AHERN AND ASSOCIATES, P.C.

By: /s/ Patrick J. Ahern (with permission)

Patrick J. Ahern
Willoughby Tower
8 South Michigan Avenue, Suite 3600
Chicago, Illinois 60603
Telephone: (312) 404-3760
patrick.ahern@ahernandassociatespc.com

COUNSEL FOR DEFENDANT
KEURIG GREEN MOUNTAIN, INC.:

**CLEARY GOTTlieb STEEN &
HAMILTON LLP**

By: /s/ Carl Lawrence Malm

Leah Brannon
Carl Lawrence Malm
2112 Pennsylvania Avenue, NW
Washington, D.C. 20037
Telephone: (202) 974-1500
lbrannon@cgsh.com
lmalm@cgsh.com

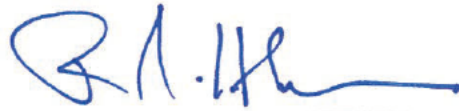
**BUCHANAN INGERSOLL &
ROONEY PC**

Wendelynn J. Newton
Mackenzie A. Baird
Union Trust Building
501 Grant Street, Suite 200
Pittsburgh, PA 15219-4413
Telephone: (412) 562-8800
wendelynn.newton@bipc.com
mackenzie.baird@bipc.com

REVIEWED AND APPROVED.

Dated: 9/14/23

New York, New York



Richard J. Holwell
Special Master

SO ORDERED.

Dated: September 15, 2023

New York, New York



Vernon S. Broderick
United States District Judge